

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEW YORK UNIVERSITY,

Employer,

- and -

Case No. 2-RC-23481

GSOC/UAW,

Petitioner.

**MOTION OF THE
NATIONAL RIGHT TO WORK
LEGAL DEFENSE AND EDUCATION FOUNDATION
TO FILE AN *AMICUS CURIAE* BRIEF**

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The National Right to Work Legal Defense and Education Foundation (“Foundation”) moves to file an *amicus curiae* brief in the above-captioned case. The Foundation is a non-profit, charitable organization that provides free legal assistance to individuals who, as a consequence of compulsory unionism, have suffered violations of their right to work; their freedoms of association, speech and religion; their right to due process of law; and other fundamental liberties and rights guaranteed by the Constitution and laws of the United States and of the several states.

The Foundation represents only individual employees, not employers or labor unions. The Foundation provides a unique perspective not supplied by the parties in this case. The Foundation has an interest in assisting those individual students who do not desire to be forced to be represented by a labor union as a condition of pursuing their educational goals. The Foundation filed an *amicus curiae* brief in *Brown University*, 342 NLRB 483 (2004) and should be permitted the opportunity to file an *amicus* in this case since the Petitioner United Auto Workers is seeking to use this case as a vehicle to overturn *Brown*. In light of the fact that approximately fifteen (15) *amicus* briefs were filed in *Brown*, the Foundation suggests that the Board invite all interested groups, organizations, educational establishments and individuals to also file *amicus* briefs in this case.

For the above-stated reasons and the reasons set forth in the *amicus* brief simultaneously filed in this case, this motion should be granted.

Respectfully submitted,

By _____ /s/ _____

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INTEREST OF THE *AMICUS CURIAE*

The National Right to Work Legal Defense and Education Foundation (“Foundation”) is a non-profit, charitable organization that provides free legal assistance to individuals who, as a consequence of compulsory unionism, have suffered violations of their right to work; their freedoms of association, speech, and religion; their right to due process of law; and other fundamental liberties and rights guaranteed by the Constitution and laws of the United States and of the several states.

Attorneys provided by the Foundation have represented numerous individuals before the National Labor Relations Board (“NLRB” or “Board”) and in the courts, including representation in such landmark cases as *Davenport v. Washington Education Ass’n*, 551 U.S. 177 (2007); *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866 (1998); *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507 (1991); *Communications Workers v. Beck*, 487 U.S. 735 (1988); *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); and *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). In hundreds of other cases throughout the country, the Foundation is aiding individuals who seek to limit their forced association with, and their financial payments to, unions.

The issue that the Petitioner seeks to raise before the Board is whether graduate students are statutory employees under *Brown University*, 342 NLRB 483 (2004). The Foundation, which has a long-standing interest in protecting the rights of graduate students from forced unionism, filed an *amicus curiae* brief in *Brown*.

Amicus Foundation believes that anytime individuals are forced to join, be represented by or support a labor union, that compulsion impacts upon their constitutional rights. Said impact is

even more harmful to teaching assistants and other graduate students since compulsory unionism affects academic freedom. In light of the above, the Foundation submits this brief to highlight the adverse impact that certifying labor unions as exclusive bargaining agents of graduate students will have upon those students.

ARGUMENT

INTRODUCTION

The primary reason graduate students attend universities is to receive an education. Any monetary compensation they receive – whether in the form of stipends, financial aid, grants or hourly pay – is incidental and secondary to that primary educational purpose. For approximately 50 years, the Board did not recognize teaching assistants as employees under the Act. *Cedars-Sinai Med. Ctr.*, 223 NLRB 251 (1976); *St. Clare’s Hosp. & Health Ctr.*, 229 NLRB 1000 (1977). It was not until the late 1990s, approximately 50 years after enactment of the National Labor Relations Act (“Act” or “NLRA”), that the Board “discovered” that graduate students were “employees.” Out of the blue, with no change in the law or the nature of a university, the Board reversed course. *Boston Med. Ctr. Corp.*, 330 NLRB 152 (1999); *New York Univ.*, 332 NLRB 1205 (2000) (*New York Univ. I*). The Board in those cases failed to recognize, and did not give proper weight to, the fact that teaching assistants are students who only incidentally are “employees.”

Four years later, in 2004, the Board decided *Brown University*, 342 NLRB 483, which reversed its holding in *New York University I*, to recognize that graduate students are students and not employees. In overturning *New York University I*, the Board denied certification to the United Auto Workers (“UAW”) as the exclusive bargaining agent of teaching assistants at Brown

University.

Now, seven years following *Brown*, the UAW is attempting to use this case to overturn *Brown*. The Board should deny the UAW's petition for three reasons. First, contrary to the UAW's claim, the status of graduate students as employees is NOT at issue in this case. The sole issue here is the appropriateness of the bargaining unit. In restructuring its graduate program, New York University ("NYU" or "University") currently treats its paid teaching assistants as paid statutory employees. Had NYU *not* recognized teaching assistants as statutory employees, and had it *not* placed them in the bargaining unit with adjunct professors, then the issue of whether the teaching assistants are statutory employees might properly be before the Board. However, those are *not* the facts of this case and the Board must limit itself to the facts before it. Second, the Board's holding in *New York University I* is a correct reading of the Act. Graduate students are not statutory employees. It would be a serious mistake for the Board to impose an industrial labor model on what is essentially a student-university relationship. Third, the Board should deny certification to the UAW as matter of public policy. Turning graduate students into "employees" interferes with their academic freedom, as well as their First Amendment rights of freedom of speech and association.

I. The Board Should Limit Its Decision to the Facts of This Case.

The Board should rule only on issues before it. NYU has re-organized its graduate student program since *New York University I* was decided. Its re-organized program does not require graduate assistants to teach. The University treats those students who voluntarily choose to teach as statutory employees, in the same bargaining unit as adjunct professors. While NYU could have declined to recognize those students as employees, it chose not to. Consequently, the

question of whether graduate teaching assistants are statutory employees should not be an issue before the Board, regardless of UAW's attempts to argue otherwise. In its petition, the UAW seeks to place the graduate students into their own, separate bargaining unit. Despite what the UAW may want, this case deals solely with unit clarification. It is not a case that involves the question whether graduate students who teach are statutory employees.

Furthermore, any attempt by the UAW to corral students who receive research grants from the government and foundations into a bargaining unit with teaching assistants has no legal justification. Under no conceivable theory are research assistants properly classified as statutory employees. Research assistant salaries generally are underwritten by independent third parties – often the federal government – for specific research projects. Research assistant rates of pay are also usually set by the grantor. In addition, students who hold temporary university jobs, working on an hourly basis often doing administrative work, clearly are not statutory employees sharing the same community of interest as student teaching assistants or students who receive federal grants. As NYU has pointed out, this is a unit clarification case. The Board should not attempt to turn this unit clarification case into something it is not

Since NYU has chosen to recognize its students who teach as statutory employees incorporated into a bargaining unit of adjunct faculty, the question of the validity of *Brown* is irrelevant. Under *New York University I*, research assistants and hourly employees were neither considered statutory employees nor placed in the same bargaining unit with teaching assistants. Any attempt by the UAW to claim here that research assistants and hourly employees are statutory employees is nothing short of a desperate attempt to create facts solely for the purpose of overturning *Brown*. The UAW has provided no persuasive arguments why Board precedent

should be overturned with respect to research assistants and hourly employees. The UAW's inclusion of those two groups of employees in its sought after bargaining unit appears to be little more than an afterthought and not central to its argument. Furthermore, the UAW has provided no basis for lumping teaching assistants, research assistants, and hourly employees into the same bargaining unit other than that they are all graduate students. Precisely because they all are graduate students is why the Board's decision in *Brown* was correctly decided and should not be overturned. These individuals are students, not statutory employees.

Should the Board overturn *Brown* in this case, said decision is unlikely to withstand judicial review because it would not be based on facts before it. It is obvious that the only reason the UAW raises the issue here is to attempt to manipulate what it perceives as a sympathetic Board to rule on an issue not properly before it. The Board should avoid diminishing its institutional status by being used in such a fashion. Should the Board be tempted to rule on the UAW's request to overturn *Brown*, however, it should, at a minimum, invite *amicus* briefing on the issue.

Prior to issuing its decision in *Brown*, the Board, in a careful, deliberate and fair manner invited the filing of *amicus* briefs. At the time the Board issued the *Brown* decision, approximately fifteen (15) *amicus curiae* briefs had been filed. Presumably a comparable number of interested parties, given the opportunity, would be inclined to file *amicus* briefs here. A failure to invite the filing of *amicus* briefs would further diminish the Board's prestige. Upon legal scrutiny, it will appear that the Board's failure to invite *amicus* briefs, coupled with a decision overturning *Brown* and not based on the facts squarely before it, is a decision issued for political or ideological reasons.

For the reasons stated above, the Board should refuse the UAW's invitation to rule on the issue presented in *Brown* – whether graduate students are statutory employees. However, in the event the Board chooses to rule on *Brown*, it should not overturn *Brown* for the reasons stated below.

II. Teaching Assistants and Other Graduate Students Are Not Employees.

The Union's petition seeks a unit of "all graduate student employees of New York University who are receiving stipends from the University." Clearly any community of interest claimed by the UAW is not based on the students' status as statutory employees, but rather on their status as students. The language of the petition implicitly concedes that the graduate students are primarily students, not primarily statutory employees.

Graduate students, whether teaching assistants, research assistants or hourly workers doing primarily administrative tasks, are principally in college and university programs to receive an education, not to earn a living. The position of "teaching assistant" and "research assistant" is part of the learning process that will enable many of those graduate students to better prepare themselves to become accredited, professional university and college professors – that is, future employees – or to pursue research positions in colleges, industry or the government. As graduate students, however, they are not principally employees. Furthermore, teaching assistants and research assistants, by the very nature of their jobs, hold short-term positions. While the requirements of their position may be intense, the primary reward for that effort is not money. Indeed, any monetary remuneration is minor compared to the intangible remuneration of academic credits, grades, training, and perhaps most importantly, practical experience in their field. It is highly unlikely that students become teaching assistants primarily to earn a living.

Consequently, they should be treated as the students they are and not as employees that labor unions wish to control.

Although the legislative history is silent on the issue, it is safe to assume that Congress did not consider graduate students who receive money for teaching and research duties as employees. Indeed, that assumption is supported by the fact that Congress has recognized the unique status of such students and has accorded them a special status by exempting them from payment of social security taxes for money earned as teaching assistants. *See* 26 U.S.C. § 3121(b)(10)(A). The Board should recognize, as Congress already has, this unique status of graduate students.

Recognition that teaching assistants do not work at universities primarily for monetary remuneration is consistent with the Board's holding in *Goodwill Industries*, 304 NLRB 767 (1991). There, the Board ruled that employees of Goodwill are not employees for purposes of the Act when the primary purpose of their work is rehabilitative rather than to earn a living.

In addition, even if, *arguendo*, graduate students are considered employees, the Board should treat them as short-term, temporary employees. Because few, if any, are likely to work as teaching or research assistants for more than a short period of time, it is likely that any union that represents them as their exclusive bargaining agent represents its own institutional interests rather than the students' interests. The students, as a practical matter, would not be part of the bargaining unit long enough to truly exercise any democratic control over the union. Excluding them as employees, as a policy matter, is consistent with Board precedent. *See Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971); *St. Thomas-St. John Cable TV*, 309 NLRB 712 (1992) (temporary employees not included in bargaining units). The Board's approach to

temporary employees is a more appropriate model for graduate students than treating them the same as long-term employees.

Lastly, the industrial model is inappropriate to impose upon the university-graduate student relationship. One of the worst abuses of exclusive representation is the leveling downward of the best in favor of the group. In the industrial model that labor unions use in collective bargaining, employees are fungible, receiving the same wages adjusted for seniority. This results in the most productive workers receiving the same wages as those least productive. That has a particularly egregious impact on graduate students for both economic and non-economic reasons.

Universities and graduate students typically receive grants from foundations and corporations that are earmarked for the hiring of teaching assistants and other graduate students to perform teaching, research or other field specific duties. Forcing universities to bargain with labor unions over the wages and working conditions of graduate students might well adversely affect the continuation of such grants. Once the exclusive bargaining agent demands that all “wages” either be raised to the same level as for those students whose teaching and research is paid for by such grants or, alternatively and more likely, be leveled downward, the incentives for foundations and corporations to provide those grants will diminish. Furthermore, most grant money already has the economic stipend set as part of the grant, thus eliminating the union’s purported purpose for representation.

Non-economically, it is inappropriate to treat teaching assistants and other graduate students as employees because some part of their “compensation” is typically in the form of academic credit. Academic credit is an intangible. Grading is associated with such credit. If

monetary compensation for teaching assistants is treated as employee wages under the Act, it is a short and natural step to treat grades received as part of the academic credit as a form of compensation subject to collective bargaining. It is likely that bargaining over grades would become a mandatory subject of bargaining. It would be consistent with labor union philosophy to demand that all graduate students receive grades within a narrow range – or even the same grades – for credits received as teaching assistants. The negative impact that would have upon the providing of academic credit and other non-tangible rewards to teaching assistants is immeasurable.

While the UAW may have Marxist dreams that students are “workers” (as opposed to students), who will be in the vanguard of an economic revolution when the workers of the world unite, the fact remains that graduate students *are* students and not employees, and they have little commonality of interest with most employees. Imposing an employee-employer model upon students’ education does not make them “workers.” If the NLRB forces teaching assistants and other graduate students to be employees under the Act, it unnecessarily and, as discussed below, unfairly burdens students who wish to pursue their education without a labor union interfering with their academic and First Amendment freedoms.

III. As a Matter of Public Policy, the Board Should Refrain from Treating Graduate Students as Employees Because of the Adverse Impact This Will Have Upon the Students’ Academic Freedom and First Amendment Rights.

One of the hallmarks of a university is respect for academic freedom, and freedom of speech and association. Each of these will be negatively impacted by compulsory exclusive representation.

One aspect of academic freedom is the right to pursue research and to teach without state control. The Board's imposition of an exclusive bargaining agent upon a bargaining unit composed of students necessarily adversely impacts upon the teaching assistants' and graduate students' academic freedom. For the reasons stated below, the Board should, as a matter of public policy, exercise its discretion and decline to force graduate students to be represented by an exclusive bargaining agent.

Academic freedom took root during the Middle Ages when universities gained some freedom from state control. The protections to scholars afforded by academic freedom expanded during the Enlightenment. By the 20th century, academic freedom was recognized in most Western countries, although governmental control of universities and infringements of academic freedom were commonplace in totalitarian regimes such as Nazi Germany and the Soviet Union.

In the United States, academic freedom is generally respected and has been accorded special legal protections by the courts. The U.S. Supreme Court has held that academic freedom is "special concern of the First Amendment." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). The Court has urged restraint by the judiciary when dealing with universities so to show due respect for academic freedom. *Board of Curators, Univ. of Mo. v. Horowitz*, 435 U.S. 78, 96 n.6 (1978) (Powell, J., concurring); *see id.* at 90-92, (opinion of the Court). Just as the courts show deference and a reluctance to interfere in university settings when there is a risk of treading upon academic freedom, so also the Board must show due deference and restraint in this area. Using the power of the state to impose an exclusive bargaining agent upon teaching assistants and other graduate students is an unwarranted intrusion into academia. As a matter of public policy and out of respect for academic freedom, the Board should refrain from imposing

exclusive representation upon teaching assistants and other graduate students.

In addition to the heavy weight the Board must give with respect to academic freedom, the Board must also consider the negative impact exclusive bargaining will have upon the free speech and free association rights of students. The imposition of exclusivity will impact upon the First Amendment rights of students in a manner that may not withstand constitutional scrutiny. The “exclusive representation” regime of the NLRA is state action. Absent the government’s grant of monopoly bargaining power to a union as an exclusive bargaining agent, students are free to work out their own contracts with universities. It is only the power of the government that takes that liberty from teaching assistants and other graduate students. Moreover, compelled negotiation and enforcement of any agreement between a union and a university is administered by the NLRB. This governmental involvement is “state action,” to which the Constitution applies. *Railway Clerks v. Hanson*, 351 U.S. 225, 232 & n.4 (1956). *Beck v. Commc’ns Workers*, 776 F.2d 1187, 1205-09 (1985) (2-1 decision), *aff’d en banc on other grounds*, 800 F.2d 1280 (4th Cir. 1986), *aff’d*, 487 U.S. 735 (1988);¹ *Seay v. McDonnell-Douglas Corp.*, 427 F.2d 996, 1002-04 (9th Cir. 1970); *Linscott v. Millers Falls Co.*, 440 F.2d 14, 16-18 (1st Cir. 1971) (“the federal statute is the source of the power and authority by which any private rights are lost or sacrificed”); *see Miller v. Air Line Pilots Ass’n*, 108 F.3d 1415, 1420 (D.C. Cir. 1997) (“it is not apparent why it is any less ‘state action’” under the NLRA than under the RLA), *criticizing Kolinske v. Lubbers*, 712 F.2d 471 (D.C. Cir. 1983); *Wegscheid v. Local Union 2991, UAW*, 117 F.3d 986, 987-98 (7th Cir. 1997); *but see Price v. Int’l Union, UAW*, 927 F.2d 88, 91-92 (2d Cir.1991); *Kolinske*, 712 F.2d at 474.

¹The Supreme Court did not rule on the “state action” issue in *Beck*, 487 U.S. at 761.

Because there is state action involved in the grant of exclusivity and the administration of relations between the employees, union and employer, the First Amendment rights of graduate students are implicated. *See Thomas v. Collins*, 323 U.S. 516, 532 (1945).

The imposition of a union as an exclusive collective bargaining agent alone implicates these First Amendment considerations. As the Supreme Court found in *Abood* :

An employee may very well have ideological objections to a wide variety of activities undertaken by the union in its role as exclusive representative. His moral or religious views about the desirability of abortion may not square with the union's policy in negotiating a medical benefits plan. One individual might disagree with a union policy of negotiating limits on the right to strike, believing that to be the road to serfdom for the working class, while another might have economic or political objections to unionism itself. An employee might object to the union's wage policy because it violates guidelines designed to limit inflation, or might object to the union's seeking a clause in the collective-bargaining agreement proscribing racial discrimination. The examples could be multiplied.

431 U.S. at 222.

While the *Abood* Court found that the state had a sufficient countervailing interest that justified infringement upon the First Amendment rights in that case, the government may not, as discussed below, have a sufficient interest that justifies the infringement in this case.

Furthermore, in addition to the impact that exclusive representation has on the interests of students, such "exclusivity" further opens the door to compulsory unionism under § 8(a)(3) of the NLRA, 29 U.S.C. § 158(a)(3), which would further invade the students' speech interests. *See generally Communications Workers v. Beck*, 487 U.S. 735 (1988).

Once the Board mandates exclusive representation, it is likely that compulsory union dues and fees will not be far behind. The Supreme Court has held that requiring employees to pay *any* union dues or agency fees as a condition of employment is "a significant impingement upon First

Amendment rights.” *Ellis*, 466 U.S. at 455. The principle underlying the Supreme Court’s decisions in compelled speech cases is that, just as the First Amendment protects the right of freedom of speech and association, so too it protects the right to refrain from compelled speech and association. *Keller v. State Bar*, 496 U.S. 1 (1990) (state cannot require payment of bar dues used for political and ideological purposes); *Abood*, 431 U.S. at 234-35 (state cannot require payment of agency fees for purposes other than collective bargaining, contract administration and grievance adjustment); *Wooley v. Maynard*, 430 U.S. 705, 713-15 (1977) (state cannot require citizens to have a state motto on automobile license plate); and *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (state cannot require salute to the flag).

The Supreme Court has found that “the agency shop itself impinges on the nonunion employees’ First Amendment interests.” *Hudson*, 475 U.S. at 309. It is not only political and ideological speech that is impacted by compulsory unionism. The Court has made it clear that:

our cases have never suggested that expression about philosophical social, artistic, economic, literary, or ethical matters to take a nonexhaustive list of labels is not entitled to full First Amendment protection. Union members in both the public and private sectors may find that a variety of union activities conflict with their beliefs. . . . Nothing in the First Amendment or our cases discussing its meaning makes the question whether the adjective “political” can properly be attached to those beliefs the critical constitutional inquiry.

Abood, 431 U.S. at 231-32.

Since *Abood*, the courts have not limited the protections afforded by the First Amendment to the right to refrain from political and ideological speech. The courts have narrowly limited the types of compelled speech that can withstand constitutional scrutiny. The First Amendment does not protect just the right to refrain from compelled political and ideological expenditures. As interpreted by the courts, neither can employees be compelled to pay for a host of other activities

including organizing, *Ellis*, 466 U.S. at 451-53; extra-unit litigation, *id.* at 453; *Lehnert*, 500 U.S. at 528; death benefits, *Ellis*, 466 U.S. at 455 n.15; charitable contributions, *Lehnert*, 500 U.S. at 524; and public relations, *id.* at 528-29 (Blackmun, J.); *accord id.* at 559 (Scalia, J., concurring).

Laws and regulations that compel speech and association are subject to a high standard of scrutiny. It is well settled that “a significant impairment of First Amendment rights must survive exacting scrutiny.” *Elrod v. Burns*, 427 U.S. 347, 362 (1976). There is no distinction between the impairment of First Amendment rights created by compelled speech and the impairment created by limitations on the right to speak. *Abood*, 431 U.S. at 234. In compelled speech cases, the Court has subjected to a high level of scrutiny laws that impact upon the First Amendment. *Hudson*, 475 U.S. at 303 & n.11.

Therefore, the infringement upon the First Amendment rights of graduate students must be subject to a high level of scrutiny. Because teaching assistants and graduate students are protected by the First Amendment right to refrain from speech and association, a classic First Amendment analysis must apply. In order to withstand constitutional scrutiny, there must be a compelling state interest that justifies the infringement on the First Amendment right of non-association. *Abood*, 431 U.S. at 220-24; *Buckley v. Valeo*, 424 U.S. 1, 65 (1976); *NAACP v. Alabama*, 375 U.S. 449, 460-61 (1958). Compelled speech can **only** be justified if the state has a compelling interest that justifies infringement on the First Amendment. *Abood*, 431 U.S. at 220-24. Despite the burden placed on non-union employees by agency fees, the Court in *Abood* held that such fees limited to bargaining costs could withstand constitutional scrutiny, because the Court found that the state had an important interest in “labor peace.” Although the Court found that such infringements could be justified in *Abood*, the case for such justification is much

weaker in the context of teaching assistants and graduate students, who are essentially students whose primary remuneration is educational not economic.

The government has the burden of showing that it has a compelling interest that justifies the burden on the First Amendment rights of the graduate students. An infringement upon First Amendment rights can only be justified when there is evidence in the record of governmental interest. *DeGregory v. Attorney Gen.*, 383 U.S. 825, 829 (1966). The NLRB's own historical record of not treating graduate students as employees shows that they are outside the industrial-labor model that the government has used in the past to justify exclusivity and compulsory unionism. The government may claim that its interests are identical to that which permits compelled speech for collective bargaining in industrial settings. *Amicus* suggests that, given the countervailing interests of academic freedom in a university setting and the limited economic interests involved in the use of graduate students as teaching assistants, no compelling interest justifies an infringement upon the students' First Amendment rights.

CONCLUSION

The Board's reversal of 50 years of policy and practice in *Boston Medical* and *New York University I* was not justified by any change in the law or the facts. The Board wisely overturned those decisions in *Brown*. It should not rush into a hasty ruling and overturn *Brown*, especially in light of the fact that the issues presented in *Brown* are not before this Board. Graduate students and teaching assistants who wish to voluntarily join together to discuss their teaching duties and obligations are free to do so. However, students who do not wish to so join and speak should not be forced to. Students should not be considered employees under the Act. If, *arguendo*, they are considered employees by the Board, they should be treated as temporary employees. Moreover,

even if, *arguendo*, students can be considered employees under the Act, the Board should consider whether there is sufficient state interest to justify this interference with academic freedom and the freedom of speech and association. Finally the Board should consider whether, as a matter of public policy, forcing students to be represented by an exclusive bargaining agent serves the Act's purposes and the larger societal interests implicated by such an intrusion into academia.

For the above-stated reasons, the Board should deny the UAW's petition; however, if the Board is considering overturning *Brown*, it should invite *amicus* briefs and consider the issues in manner in which everyone has the opportunity to weigh in, rather than create new law without giving due weight and consideration to all points of view.

Respectfully submitted,

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Dated: July 26, 2011

CERTIFICATE OF SERVICE

This is to certify that a copy of the Motion of the National Right to Work Legal Defense and Education Foundation to file an *Amicus Curiae* brief and a copy of the *Amicus* brief of the National Right to Work Legal Defense and Education Foundation in Case 2-RC-23481 have been served by electronic mail on July 26, 2011, on the following:

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